(165) H.P.R.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR (C.G.)

DIVISION BENCH*: HON'BLE SHRI K.H.N. KURANGA, CJ
& HON'BLE SHRI L.C. BHADOO, J.

DEATH REFERENCE NO.2 OF 2002

(Made by the Second Additional Sessions Judge, Fast Track, Mungeli, District Bilaspur under Section 366 of the Code of Criminal Procedure)

State of Chhattisgarh

Versus

Komal Prasad Pandey

AND

CRIMINAL APPEAL NO.595 OF 2002

Komal Prasad Pandey

Versus

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
14 AUGUST 2003

HON'BLE THE CHIEF JUSTICE

I agree

Sd/-
Chief Justice

POST FOR JUDGMENT ON 7TH AUGUST, 2003

Sd/-
L.C.BHADOO
Judge
6th AUGUST 2003

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR (C.G.)

DIVISION BENCH*: HON'BLE SHRI K.H.N. KURANGA, CJ
& HON'BLE SHRI L.C. BHADOO, J.

DEATH REFERENCE NO.2 OF 2002

(Made by the Second Additional Sessions Judge, Fast Track, Mungeli, District Bilaspur under Section 366 of the Code of Criminal Procedure)

State of Chhattisgarh
Through: Police Station, Patharia
District: Bilaspur.

Versus

Komal Prasad Pandey
Son of Ramanand Pandey,
Aged about 28 years, Resident of Badara (B),
Police Station: Patharia, District: Bilaspur.

Present: Mr. Ashok Verma, Deputy Advocate General for the State.

Mr. K.A. Ansari, Advocate for the accused.

Criminal Appeal No.595 of 2002

Komal Prasad Pandey
Son of Ramanand Pandey,
Aged about 28 years, Resident of Badara (B),
Police Station: Patharia, District: Bilaspur.

Versus

State of Chhattisgarh
Through: Police Station, Patharia
District: Bilaspur

Present: Mr. Shashank Shrivastava, Advocate for the appellant.

Mr. Ashok Verma, Dy. Advocate General for the State/respondent.

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JUDGMENT

(Delivered on 7th of August, 2003)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J.*** -

1. Accused Komal Prasad Pandey was separately tried in three Sessions Trials namely, S.T.No.331 of 1999 i.e. the present case, S.T.Nos.330 of 1999 & 326 of 1999 by the Second Additional Sessions Judge, Fast Track Court, Mungeli, District Bilaspur for the commission of the offences punishable under Section 302 of the Indian Penal Code and Section 25 (1-B) (b) read with Section 4 of the Arms Act for committing the murders of Raghuvar Prasad Pandey, Ashutosh Pandey - son of Raghuvar Prasad Pandey and Shanti Bai - wife of Raghuvar Prasad Pandey. The learned Additional Sessions Judge by his judgment dated 17th April, 2002 after holding accused Komal Prasad Pandey guilty of the offences under Section 302 of the Indian Penal Code and also for the offence under Section 25 (1-B) (b) read with Section 4 of the Arms Act in each of the three sessions trials, sentenced him to death for the offence under Section 302 of the Indian Penal Code and to undergo rigorous imprisonment for three years and pay a fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for two months for the offence under Section 25 (1-B) (b) read with Section 4 of the Arms Act in each of the case.

2. Criminal Appeal No.595 of 2002 has been filed by accused/appellant Komal Prasad Pandey against the said convictions and sentences passed against him by the Second Additional Sessions Judge, Fast Track Court, Mungeli in Sessions Trial No.331 of 1999. On the other hand, the learned Additional Sessions Judge has made Death Reference No.2 of 2002 to this Court for confirmation of the death sentence imposed by him on the accused.

3. This judgment shall dispose of the aforesaid appeal filed by the accused and the reference made by the learned Additional Sessions Judge.

4. The houses of the accused and the family of the deceased are adjacent to each other, even their courtyard is common i.e. without any partition wall. Entry to the house of the deceased family is through the common gate and courtyard, which is in front of the house of the accused. The father of the accused namely, Ramanand Pandey and deceased Raghuvar Prasad Pandey were cousin brothers.

5. The prosecution case in brief is that on 13th June, 1999 at about 9.05 a. m. in village Badara (B), Police Station Patharia, accused Komal Prasad Pandey committed the murder of Raghuvar Prasad Pandey at Ram Sagar Pond of village Badara (B) assaulting him with a sword. Prior to this, at 9 a.m. he committed the murder of Ashutosh Pandey in the courtyard of his own house by assaulting with a sword. Thereafter at 9.10 a.m. he committed the murder of Shanti Bai near the house of one Vijay Sharma by assaulting with the same sword. At 13.00 hours Smt. Ratna Pandey - wife of deceased Ashutosh Pandey lodged a report at Patharia Police Station alleging that she was residing at village Badara (B) and she was a housewife. On 13th June, 1999 in the morning she was cooking the food. Her husband Ashutosh Pandey and father-in-law Raghuvar Prasad Pandey had gone to take bath at the Ram Sagar Pond. Her mother-in-law, after asking her to cook the vegetables, left the house to watch Krishna Serial on television in the house of Vijay Sharma. At about 9.00 a.m. when her son Sunny was not found, she went in search of him to the terrace of the house and saw that her son Sunny aged about 1½ years was playing on the terrace. All of a sudden she heard the sound (Bhad) of falling of something. When she looked towards the side where the sound was heard, she saw that Komal Prasad Pandey was assaulting her husband in his courtyard with a sword and her husband was lying on the ground. His neck was cut. On seeing her husband in

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a pool of blood she became perturbed and after taking her son with her, she came down from the terrace of her house and entered the kitchen. Thereafter she became unconscious. After sometime when she regained consciousness she started crying and called the villagers for help and asked to call her father-in-law and mother-in-law as Komal Prasad Pandey has murdered her husband with a sword. Then Varun and Sukhram told her that her father-in-law Raghuvar has been murdered at the pond and her mother-in-law Shanti Bai had also been murdered in front of the house of Vijay Sharma. The family of the deceased and the family of accused Komal Prasad Pandey were in inimical terms. Fifteen days prior to the date of incident, Komal Prasad Pandey quarreled with her in-laws and two days prior to this incident Komal Prasad Pandey and his brother Ashok had given threat to kill her family members as Komal Prasad Pandey was suspecting that the family members of Ratna Pandey were practicing witchcraft and on account of that he committed the murder of her husband, father-in-law and mother-in-law with a sword at the places wherever they were found.

6. R. Tigga, the Station House Officer, Police Station, Patharia recorded Merg Intimation No.14 of 1999 (Ex.P-1) and registered the case vide Crime No.26 of 1999 for offences under Section 302 of the I.P.C. under F.I.R. Ex.P-2. Thereafter, he reached the scene of in occurrence village Badara (B) and gave notices to the witnesses under Ex.P-8 & Ex.P-8A for preparation of the Panchanama of the dead body of Raghuvar Prasad Pandey and in presence of the witnesses he prepared the Panchnama, Ex.P-9, of the dead body. After preparing the requisition Ex.P-21, the dead body of Raghuvar Prasad Pandey was sent for post mortem examination to the Primary Health Centre, Patharia along with Constable Dileep Kumar. At the time of the preparation of the Panchanama of the dead body of Raghuvar Prasad Pandey, the body was got photographed which are Exs.P-3A, P-3B & P-3C. On the same day, one white coloured terry

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cot inner garment (Bandi), one white coloured Gamcha, one white coloured Lungi, blood stained soil and plain soil were recovered and seized under Ex.P-5, which bears the signature of the Investigating Officer from 'C' to 'C'. On 14th June, 1999, on enquiry, accused Komal Prasad Pandey gave memorandum Ex.P-18, the photocopy of which is Ex.P-18C, in which accused Komal Prasad Pandey informed that blood stained sword was concealed in his house. This memorandum was given in the presence of witnesses Kailash Sharma and Vijendra Sharma, whose signatures are at 'C' to 'C' and 'B' to 'B', respectively. On the same day in pursuance of the information given by the accused, he took them to his house and after opening the lock with a key took out the sword, which was seized under Ex.P-19, copy of which is Ex.P-19C. This recovery memo bears the signatures of witnesses Kailash & Vijendra and accused Komal Prasad Pandey. The sword is Article 'F'. On the same day one blue coloured T-shirt and one purple coloured full pant of the accused were seized under Ex.P-20 which bears the signatures of witnesses Kailash & Vijendra. Accused Komal Prasad Pandey was arrested on 15th June, 1999, under arrest Panchanama Ex.P-20. The seized sword was sent for examination by the doctor on 12.07.99 under Ex.P-7A, a copy of which is Ex.P-23C, to ascertain as to whether the injuries found on the body of Raghuvar Prasad Pandey can be caused by the sword. One sealed packet, which was produced by Constable Dileep Kumar, was seized under Ex.P-4. The seized articles were sent for chemical examination to the Forensic Science Laboratory through the Superintendent of Police, Bilaspur, which was acknowledged by the F.S.L. under Ex.P-12. The report of the F.S.L. is Ex.P-14. Thereafter, the clothes and the sword were sent to the Serologist for examination and report. The report of the Serologist is Ex.P-15. The site plan of the place of incident was got prepared by the Patwari, which is Ex.P-7.

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7. After completion of the investigation, charge sheet was filed in the Court of the Judicial Magistrate, First Class, Mungeli, who in turn committed the case for trial to the Court of the Sessions Judge, Bilaspur, and from there, the Additional Sessions Judge, Mungeli, received the case on transfer.

8. The learned Additional Sessions Judge after perusal of the record reached the conclusion that there were sufficient material to frame the charges under Section 302 of the Indian Penal Code and Section 25 of the Arms Act against the accused. Accordingly, he framed the charges against the accused for the commission of the offences punishable under Section 302 of the Indian Penal Code and Section 25 of the Arms Act. The accused denied the charges and claimed to be tried.

9. The prosecution in order to prove the charges levelled against the accused examined in all thirteen witnesses at the trial. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the evidence of the prosecution witnesses and stated that he was not present in the village on the date of the incident and he has been falsely implicated in the case. He has further stated that he was not suspecting the family of the deceased persons that they were practicing witchcraft nor he gave any threat to them. He also stated that he has not murdered Raghuvar Prasad Pandey, the sword was not seized from him, he had not signed the recovery memos Ex.P-19 & Ex.P-20, and his clothes were not seized. He was arrested on 13.06.99 and not on 15.06.99. Ultimately, he said that the witnesses have deposed against him on account of animosity, as there was some dispute between him and Kailash Das (PW-4) on account of the repair of the cycle.

10. The learned Additional Sessions Judge after hearing the arguments of Shri Akhil Mishra, Additional Public Prosecutor and Shri Vijayshri Gupta, counsel for the accused and after believing the evidence

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adduced by the prosecution, convicted and sentenced the accused for the commission of the offences under Section 302 of the Indian Penal Code and section 25 (1-B) (b) read with Section 4 of the Arms Act as aforesaid.

11. We have heard Mr. K.A. Ansari, counsel for the accused and Shri Ashok Verma, Deputy Advocate General for the State.

12. As far as the nature of death of deceased Raghuvar Prasad Pandey being homicidal in nature is concerned it is not in dispute. Dr. Anil Gupta (PW-12) in his evidence has stated that on 14/06/1999 he was working as Block Medical Officer in the Primary Health Center, Patharia and on that day on the requisition of Patharia Police Station he conducted the autopsy on the dead body of deceased Raghuvar Prasad Pandey. On examination of the dead body he found the following injuries:

(i) Incised injury over right side of abdomen below lower border of liver, penetrating in abdominal cavity. Size 30 cms. x 10 cms. at center x 7 cms. situated 2 cms. away from midline reaching to back of right side of chest. Margins of the wound are clean cut and regular. Blood clot present over wound. Liver and intestine are found blood stained.

(ii) Incised injury over right side of chest situated from midline below right clavicle and extending to back of right side of chest penetrating to thoracic cavity, cutting skin, muscle, ribs and upper love of right lung. Size of injury is 25 cms. x 6 cms. x 12 cms. Margins of the wound are clean cut and regular. Blood clot present over wound.

(iii) Incised injury size 16 cms. x 4 cms. x 2 cms. over right side of face situated from right side of nose and extends below lobule of right ear. Cutting skin, muscles of face, and right mandible and bones of right cheek. Margins of the wound are clean cut and regular. Blood clot present over wound.

(iv) Incised injury over front of middle of left fore arm size 11 cms. x 7 cms. x 5 cms., cutting skin, muscles and blood vessels. Margins of the wound are clean cut and regular. Blood clot present over wound.

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(v) Incised injury over middle of front of left arm size 8 cms. x 5 cms. x 2.5 cms., cutting skin, muscles and blood vessels. Margins of the wound are clean cut and regular. Blood clot present over the wound.

(vi) Incised injury over medial side of left knee joint, size 8 cms. x 2 cms. x ½ cm. Margins of the wound are clean cut and regular. Blood clot present over the wound.

13. The doctor has further stated that in his opinion on account of excessive bleeding from the injuries No.1 to 6 the deceased died. All the above injuries were ante mortem in nature. The death of deceased Raghuvar Prasad Pandey was homicidal in nature. PW-4 Kailash Das & PW-10 Ramashanker Pandey in their evidence have stated that they saw accused Komal Prasad Pandey assaulting the deceased with a sword and Raghuvar Prasad Pandey died on the spot on account of the sword injuries sustained by him. Therefore, in view of the above medical and other evidence, it is proved that the death of deceased Raghuvar Prasad Pandey was homicidal in nature.

14. As far as the motive behind the crime is concerned, PW-1 Ratna Pandey has mentioned in her report and stated before the Court that the family of the accused was suspecting her father-in-law, mother-in-law and their family to be practicing witchcraft against the family of the accused and on account of that some quarrel took place fifteen days back and the parents of the accused were not residing in the village since then. Moreover, in Para 6 of the evidence, this witness has stated that few days prior to the date of incident, the accused and his brother Ashok threatened them that they would teach a lesson to each and every one by cutting them. Therefore, the accused was having animosity against the family of the deceased on account of the suspicion that they were practicing witchcraft and some quarrel also took place in this regard. Hence, this was the motive for committing the crime.

15. Now coming to the question as to whether the accused/appellant Komal Prasad Pandey had committed the murder of Raghuvar Prasad

Pandey by assaulting him with a sword, the prosecution has examined two eyewitnesses namely, PW-4 Kailash Das & PW-10 Ramashanker Pandey. PW-4 Kailash Das has stated in his evidence that on the morning of 13th June, 1999 at about 8.45 a.m. he was brushing his teeth, Ramashanker Pandey who was present there was also brushing his teeth and Raghuvar Prasad Pandey was also brushing his teeth. Two other persons namely, Parvoo Rawat & Radhey Rawat were also present there. At that time, accused Komal Prasad Pandey came from backside and assaulted Raghuvar Prasad Pandey saying that Raghuvar Prasad Pandey had made his life miserable. PW-4 Kailash Das is a priest. He left the site without taking bath. He was so frightened that he could not perform Puja on that day. He reached his house and thereafter, Ramsingh Kurmi came to his house and informed him that Shanti Bai & Ashutosh Pandey were also murdered. The whole day he remained in his house. PW-10 Ramashanker Pandey has also corroborated the evidence of PW-4 Kailash Das. In his evidence, PW-10 has spoken about the presence of Kailash Das & Raghuvar Prasad Pandey on the spot. He has stated that in the morning of 13th June, 1999 he was brushing his teeth, Raghuvar Prasad Pandey was washing his clothes and Kailash Das was also brushing his teeth. One Mahesh was also washing his clothes at some distance. Komal Prasad Pandey came from the back side, and stepped down up to the platform where Raghuvar Prasad Pandey was washing the clothes and after abusing him, he assaulted Raghuvar Prasad Pandey with a sword. PW-10 has further stated that Raghuvar Prasad fell down. He asked Komal Prasad Pandey what he had gained by killing Raghuvar Prasad. Komal Prasad looked at him and again assaulted Raghuvar Prasad 7-8 times with the sword. The whole body of Raghuvar Prasad was cut and he died on the spot. Thereafter, Komal Prasad went towards the village. After seeing the first assault on Raghuvar Prasad, Kailash Das left the site but again came back. On seeing this incident, Kailash Das became frightened

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and asked Ramashanker Pandey as to why he was standing there and asked him to go to his house. When Ramashanker Pandey was going to his house he saw Shanti Bai's dead body in front of the house of Vijay Sharma, as his house is adjacent to the house of Vijay Sharma.

16. Learned counsel for the accused/appellant submitted that there are contradictions in the evidence of PW-4 & PW-10, they are not the natural witnesses and they are created witnesses. He further submitted that PW-4 Kailash Das has stated that the whole day he remained in his house, whereas PW-10 Ramashanker Pandey has stated that after some time of the incident, Kailash Das came back. It is true that this contradiction is on record. But, by pointing out this contradiction, the learned counsel for the accused has tried to show that PW-4 & PW-10 are not the eyewitnesses and they had not seen the incident. It is a fact that Kailash Das is a priest of a temple, which is situated near this Ram Sagar Pond itself. This fact has not been denied and being a Pujari of the temple, it is but natural that in the morning he had gone to the pond and taken bath before performing the Puja. Moreover, he is the resident of that particular village and he had no animosity against the accused. As such his presence at the pond cannot be doubted, merely on account of this minor contradiction in the evidence of PW-4 Kailash Das & PW-10 Ramashanker Pandey.

17. Learned counsel for the accused further submitted that PW-10 Ramashanker Pandey is closely related to Raghuvar Prasad Pandey and Ashutosh Pandey because the sister in law of Ashutosh is married to this witness and thus he is an interested witness. The testimony of a witness cannot be discarded merely on the ground that he is a relative of the deceased. As per the settled law, a testimony of the close relatives or interested witnesses must be scrutinized meticulously in order to ascertain the correctness of the evidence of that witness. The time of the incident is morning and at that time it is but natural that villagers remain present at the pond

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for taking bath. In the cross-examination of these two witnesses, the defence has not been able to elicit anything, which makes the presence of these witnesses at the scene of occurrence doubtful.

18. Learned counsel for the accused further argued that as per the evidence of these two witnesses, Mahesh, Parvoo Rawat & Radhey Rawat were also present at the scene of occurrence but they have not been produced by the prosecution as witnesses, therefore, adverse inference must be drawn against the prosecution. We do not find any force in this argument of the learned counsel. In order to prove a fact it is not necessary that more number of witnesses are to be examined. Depending upon the quality of the evidence a fact can be proved even by producing a single witness. Moreover, PW-13 R. Tigga, the Investigating Officer in his cross examination has stated that he enquired from Mahesh who stated that he does not know anything about the incident and other persons also said that they do not know anything. Therefore, their statements were not recorded and they were not cited as prosecution witnesses. Moreover, it has come on record that accused Komal Prasad Pandey murdered three persons of a family and on account of that residents of the entire village were frightened and nobody was coming forward even to help Ratna Pandey, the wife of deceased Ashutosh Pandey. They were not even prepared to keep her with them. Therefore, in such a situation it was very difficult for the prosecution to collect the evidence. PW-4 Kailash Das & PW-10 Ramashanker Pandey are natural witnesses and nothing has been brought out in their cross-examination which makes their presence at the scene of occurrence doubtful. If PW-10 is a relative of the deceased, as argued by the learned counsel for the accused, then the accused is also a relative of the deceased being son of cousin brother of deceased Raghuvar Prasad Pandey. The accused and Ashutosh Pandey are cousins. The whole village is inhabited mainly by Brahmins, and most of them are related to each other. Therefore, on account of the relation-ships,

unless and until some thing else comes on record, which makes the evidence of witness doubtful, their evidence cannot be discarded only on that ground.

19. Learned counsel appearing for the accused submitted that in the site map Ex.P-27, the I.O. has not shown the place where the eyewitnesses were present. Therefore, the prosecution case becomes doubtful. There is no force in this argument also. It is not mandatory that the place where the witnesses were present must be indicated in the site plan and if the same is shown then the site plan does not becomes doubtful. It is true that if the place where the witnesses were standing is indicated the map becomes more reliable and more relevant in order to scrutinize the evidence of the witnesses. But merely on the basis of this, the evidence of the eyewitnesses cannot be disbelieved. Learned counsel tried to point out one or two omissions in the evidence of these witnesses in the statements recorded under Section 161 of the Cr.P.C., but these omissions are of no significance, as has been discussed above. By cross-examining these witnesses, nothing has been elicited in their evidence, which makes their presence on the spot doubtful. They are natural witnesses. Therefore, the prosecution has been able to prove by producing convincing evidence of these two witnesses that they saw accused Komal Prasad Pandey assaulting deceased Raghuvar Prasad Pandey with a sword at the Ram Sagar Pond. The finding of the trial Court on this point is correct and based on sound reasonings.

20. Now coming to the recovery of the sword (Article 'F'), the weapon of offence, at the instance of the accused/appellant, PW-13 R. Tigga, the I.O. has categorically stated that on 14th of June, 1999, during the enquiry from the accused, the accused gave memorandum Ex.P-18, the original of which is in Sessions Trial No.330/99 and the copy of which is Ex.P-18C, in which he stated that he has kept the blood stained sword concealed in his house. In pursuance of this

information, he recovered the sword and the accused after opening the lock of the house by a key took out the sword from inside the house, which was seized by him. The original seizure memo Ex.P-19 is in Sessions Trial No.330/99 and the copy of the same is Ex.P-19C, which bears his signature, the signatures of the witnesses namely, Kailash & Vijendra and the accused. The I.O. further stated that the accused produced one blue coloured T-shirt and one purple coloured full pant. Both these clothes were stained with blood and he seized these clothes under seizure memo Ex.P-20, which bears the signatures of the witnesses and the accused. The pant and the shirt are Articles E-1 & E-2. He has further stated that on 12th July, 1999, the said sword was sent to the doctor for opinion and the doctor gave his opinion, Ex.P-23, that injury Nos.1 to 6 which were found on the body of deceased Raghuvar Prasad Pandey could be caused by this sword. Thereafter, the sword and clothes of the accused were sent for chemical examination and the chemical examination report is Ex.P-25 in which the sword and clothes of the accused were found stained with blood. However, the Serologist's report, Ex.P-26, shows that the origin of the blood and group of the blood could not be ascertained as the blood was disintegrated. PW-11 Kailash Sharma has corroborated the testimony of PW-13 R. Tigga and he has stated that the Police came for investigation in connection with the death of Raghuvar Prasad Pandey, Shanti Bai & Ashutosh Pandey and during that investigation the accused gave information in the village itself that the weapon which he used was in his house. On that memorandum Ex.P-18 was prepared which bears his signature and in pursuance of the information given by the accused, he took them to his residence and after opening the lock with a key, he went inside the house and brought the sword and produced the same before the Police which was blood stained. The sword was of iron and the same is Article 'F'. The recovery memo Ex.P-19 was prepared which bears his signature. This witness has

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further proved the memo Ex.P-20 by which the clothes of the accused were seized on being produced by him. Learned counsel for the accused/appellant submitted that witness Vijendra has not been produced. We are of the opinion that merely on non-production of Vijendra, the recovery cannot be termed as doubtful because the recovery memo has been proved by the I.O. as well as by PW-11 Kailash Sharma, who is an independent witness.

21. Learned counsel for the accused further submitted that Para 32 of the evidence of PW-13 R. Tigga shows that first he has stated that he has brought the accused along with him from the Police Station, but thereafter, he stated that other officials of the Police Station: Patharia brought the accused and memorandum was taken in the school of village Badara (B). Merely on this conflicting statement, which was immediately rectified by the I.O., it cannot be said that the evidence of this witness is doubtful and it cannot make the presence of the accused doubtful. Such things may happen when the statement was recorded after two years of the incident. Therefore, the presence of the accused at the time of the recovery and memorandum cannot be doubted.

22. Learned counsel for the accused further submitted that the recovery of the sword is doubtful because when the accused was knowing that he has used the sword in the commission of the murders and moreover it was blood stained, it cannot be believed that any person of ordinary prudence would keep the sword in his house when he was knowing that if the sword is recovered then it would become evidence against him. This argument of the learned counsel is based merely on conjunctures. It is very difficult to read the mind of a person and more so of a criminal as to how he would behave and conduct himself in a particular circumstance or situation. This sword belonged to accused Komal Prasad as he was carrying the same since beginning. Moreover, keeping the sword in his house cannot be doubted because it has come in evidence that fifteen days

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prior to the date of incident some quarrel took place between the family of the deceased and the family of the accused, the parents of the accused had gone to some other place and on the fateful day the accused was the only person residing in the house. Therefore, keeping the sword in the room and locking it, looking to the facts and circumstances of the case, cannot be considered as improbable.

23. Learned counsel for the accused further submitted that there is a contradiction regarding the size of the sword in the recovery memo and in the report of the doctor. In the recovery memo Ex.P-19C, the size of the sword is mentioned as $2\frac{1}{2}$ ft. and the width of the blade as $1\frac{1}{2}$ inch. It has no where been mentioned that it was measured, whereas in the doctor's report, Ex.P-23, actual size has been mentioned in centimeters which shows that after measuring, the length of the sword is mentioned as 92 cms. which comes to 3 ft. and the blade size has been mentioned as 4 cms. which comes to 1 $\frac{1}{2}$ inch. Dr. Anil Gupta PW-12, in his examination in chief, in Para 6 has stated that the sword, Article 'F', was examined by him and he mentioned the sword in his report as Article 'F'. In view of this evidence of the doctor it is difficult to say that it is not the same sword, which was recovered from the house of the accused. Learned counsel for the accused has drawn our attention to Para 16 of the evidence of Dr. Anil Gupta in which he has stated that as on the date of recording of evidence, he cannot say with certainty that Article 'F', the sword, is the same which was examined by him because it does not bear his paper slip which was fixed on the sword by him. Only on this ground, this witness has stated in the cross-examination that with certainty he cannot say, but in the examination in chief, this witness has clearly stated that it is the same sword, but the paper slip bearing his signature was not found because, in the Courts the articles of offence are kept in such a way that while handling and due to passage of time the paper slip might have fallen down some where. Therefore, in view of the above discussion, we are of the

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opinion that the weapon of offence, which was used by the accused i.e. the sword (Article 'F'), was recovered at the instance of the accused from his house.

24. The learned counsel for the accused argued that human blood was not found on the sword, therefore the sword cannot connect the accused with the murder of Raghuvar Prasad Pandey. It is true that Serologist's report shows that the blood, which was found on the sword and the clothes of the accused, was disintegrated, therefore the blood group could not be ascertained. But, as per the report of the chemical examiner, Ex.P-23, human blood was found on the sword, Article 'F', and the clothes of the accused. There is other evidence, through which it stands proved that it was with the sword, Article 'F', that the accused assaulted Raghuvar Prasad Pandey because PW-12 Dr. Anil Gupta has clearly stated that he had examined this sword. Moreover, other witnesses have stated that the accused assaulted the deceased with a sword and PW-13 R. Tigga has stated that the sword, Article 'F', was recovered at the instance of the accused from his house. The clothes of accused were also found stained with human blood. It would have been a different situation, where no eyewitness and other witnesses were available and prosecution tried to connect the accused with the offence merely on the basis of recovery of sword, but in the present case there is other evidence, which lends support to the case of the prosecution that Article F, the sword, was used as the weapon of offence. In view of the above discussion, we are of the considered opinion that Artilce 'F', the sword, was recovered from the possession of the accused which he used as the weapon of offence in committing the murder of deceased Raghuvar Prasad Pandey.

25. Therefore, the finding of the trial Court is based on legal and convincing evidence and the learned trial Court has committed no illegality in coming to the conclusion that accused Komal Prasad Pandey committed the murder of Raghuvar Prasad Pandey. Hence,

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the offence against the accused/appellant under Section 302 of the I.P.C. stands proved.

26. As far as the question of offence under Section 25 (1-B) (b) read with Section 4 of the Arms Act is concerned, the learned counsel for the accused has not argued anything. Even otherwise, in view of the above conclusions it is proved that the accused used the sword as a weapon of offence and the same was recovered from his possession which is of a size not permissible under the Arms Act, because as per the notification No.6312/6552-11-20(1) dated 22nd November, 1974 issued by the State of Madhya Pradesh, nobody can keep such an arm without valid license and the accused was not in possession of any license. Therefore, the offence under Section 25 (1-B) (b) read with Section 4 of the Arms Act stands proved against the accused/ appellant and the conclusion of the trial Court in convicting the accused for the said offence does not require any interference by this Court as the same is based on legal evidence.

27. Now coming to the question of sentence, the learned counsel for the accused/appellant argued that this case is not the rarest of rare cases in order to award the extreme penalty of death to the accused. He submitted that in rural areas, the people of Chhattisgarh are very backward and illiterate. Therefore, the people are superstitious and they believe in superstition. In the State of Chhattisgarh, daily crimes are being committed under the belief or suspicion that some person is practicing witchcraft and by practicing witchcraft he has harmed the family of the accused or created some problem for the family. On this ground, this crime has been committed, as per the evidence of the prosecution. The accused is not a person coming from criminal background. He is a young man and the murders have not been committed for a gain or lust and he is not a menace to the society. Moreover, the family of the deceased and the family of the accused are closely related. Therefore, life imprisonment will meet the ends of justice. Learned,

counsel for the accused/appellant relied upon the judgment of Hon'ble the Supreme Court in the case of **Bachhitar Singh and another vs. State of Punjab** reported in **2002 AIR SCW 4061**.

28. On the other hand, the learned Deputy Advocate General for the State submitted that three cold blooded, brutal and ghastly murders have been committed by the accused and on account of that whole village was terrified. He further submitted that in order to send a message it is necessary that the accused be awarded with capital punishment. Learned Deputy Advocate General relied upon the judgment of Hon'ble the Supreme Court in the case of **Ravji @ Ram Chandra vs. State of Rajasthan** reported in **1996 Cr.L.R. (SC) 24**.

29. Section 354 (3) of the Cr.P.C. lays down that "when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence." This section has been interpreted by the Hon'ble apex Court time and again in many cases and the general rule which has been laid down by the Hon'ble apex Court is that 'life imprisonment' is rule and 'death penalty' is an exception i.e. the death penalty can be awarded in the exceptional cases only. The land mark judgment on this point is **Bachan Singh vs. State of Punjab** reported in **(1980) 2 SCC 684** in which Hon'ble Apex Court after considering all the aspects and constitutional validity of this provision laid down that (i) the extreme penalty of death should not be inflicted except in the gravest cases of extreme culpability (ii) before opting for the death penalty the circumstances of the 'offender' also required to be taken into consideration along with the circumstances of the 'crime' (iii) life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether insufficient punishment having regard to the relevant circumstances of the crime (iv) a

balance sheet of the aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. Hon'ble Apex Court also referred to the aggravating circumstances in para-202 of the judgment and mitigating circumstances in para-206 of the judgment. This judgment was again considered in the case of **Machhi Singh and others vs. State of Punjab** reported in **(1983) 3 SCC 470** in which the principle of rarest of rare case was again reiterated and it was held that the death sentence can only be inflicted in case where the murder was cold-blooded, calculated and gruesome multiple murders as a reprisal in a family feud and in which the collective conscience of the community is so shocked, that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded when the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community; when the murder is committed for a motive which evidence total depravity and meanness e.g. murder by hired assassin for money or reward, or cold blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust or murder is committed in the course of betrayal of the motherland; when murder of a member of a Scheduled Case or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath or in cases of bride burning or dowry death or when whose murder is committed is an innocent child or a helpless woman or old or infirm person.

30. Again in the case of **Allauddin Mian and others vs. State of Bihar** reported in **(1989) 3 SCC 5** Hon'ble Apex Court considered Section 354 (3) of the Cr.P.C. and reiterated the principles laid down in

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earlier decisions and held that holding the reasons for award of the death sentence are mandatory. Sub-section (3) of Section 354 cast a heavy duty on the Court to explain its choice why such sentence is being awarded. The special reasons clause in that sub-section is a sufficient safeguard against arbitrary imposition of the extreme penalty and if the Court reached the conclusion that the criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the Court should ordinarily impose the lesser punishment. Only in those exceptional cases in which the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community, would it be permissible to award the death sentence.

31. This aspect was again considered by the Hon'ble Apex Court in the case of **State through Superintendent of Police, CBI/SIT vs. Nalini & others** reported in **1999 (5) SCC 253** and in the case of **Om Prakash vs. State of Haryana** reported in **1999 (3) SCC 19**. In that case a member of a Para Military Force who has killed seven members of the family was not awarded extreme penalty for the reason that he had been labouring under the strain that he and the members of his family had been suffering due to injustice being meted out to them by the family of the deceased. It was considered to be mitigating circumstances in that case. In the case of **State of Punjab vs. Gurmej Singh** reported in **2002 (6) SCC 663** Hon'ble Apex Court again held that before awarding the death penalty the Court has to consider the motive of the crime, manner of the assault, the impact of the crime on the society as a whole, the personality of the accused, the circumstances and facts of the case as to whether the crime committed is for satisfying any kind of lust, greed or in pursuance of any organized anti-social activity or by way of organized crime, drug trafficking or the like or the chances of inflicting the society with a similar criminal act that is to say vulnerability of the members of the society at the hands of the

accused in future or commission of the murder which may be shocking to the conscience.

32. The sum and substance of the principles enumerated by the Hon'ble Apex Court extracted above, is that the death penalty can be awarded only in rarest of rare cases and in exceptional cases looking to the facts and circumstances of the particular case, examples of which have been cited in the above referred cases and where looking to the facts and circumstances of the case the awarding of the life imprisonment is inadequate based on the above law by the Hon'ble Apex Court.

33. We have considered the legal submissions made by both the counsel. As per the prosecution case, it is evident that the accused and the deceased are closely related. Even their houses are adjacent to each other. The courtyard is common and they are cousins. The offence appears to be committed by the accused on account of suspecting the family of the deceased practicing witchcraft and some quarrel also took place between the two families fifteen days prior to this incident. Therefore, by any stretch of imagination, this crime cannot be considered as crime committed for any gain or lust and there is no evidence on record, which shows that the accused is a menace to the society. Therefore, we are of the opinion that in view of the above laws laid down by the Hon'ble Apex Court and specifically looking to the matter of **Om Prakash (supra)** in which the accused murdered seven persons of a family only for the reason that the family of the accused had been suffering due to injustice being meted out to them by the family of the deceased. Similarly, in this connection, as per the law laid down in the matter of **Bachhitar Singh and another (supra),** we are of the considered opinion that the present case is not rarest of rare cases. As such, capital punishment awarded by the learned trial Court cannot be sustained. Therefore, the death sentence awarded by the learned Additional

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Sessions Judge to accused/appellant Komal Prasad Pandey cannot be confirmed for the reasons mentioned herein above.

34. In the result, the convictions of the accused/appellant for the commission of the offences under Section 302 of the I.P.C. and Section 25 (1-B) (b) read with Section 4 of the Arms Act are maintained. The sentence of death is set aside. In its place, we sentence the accused/appellant to undergo imprisonment for life and pay a fine of Rs.1,000/- (Rupees one thousand only), in default of payment of fine to further undergo simple imprisonment for three months. We maintain the sentence imposed by the learned Additional Sessions Judge on the accused/appellant for the commission of the offence under Section 25 (1-B) (b) read with Section 4 of the Arms Act.

35. Thus, the appeal of the accused/appellant is partly allowed to the extent indicated above and the reference for confirmation of the death sentence is rejected.

Sd/-
Chief Justice
7/8/03

Sd/-
L.C.BHADOO
Judge
7/8/03

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